

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

BRIAN A. MCVEIGH et al.,)	
)	
Plaintiffs,)	
)	
v.)	CIVIL ACTION NO. CV-09-0685-S
)	
CALLAN ASSOCIATES,)	
INCORPORATED et al.,)	
)	
Defendants.)	

JOINT REPORT ON DISCOVERY AND SCHEDULING

Pursuant to the Court's June 4, 2009 Order (DE 22), counsel for the parties conferred regarding discovery and scheduling issues at 9:00 a.m. on June 17, 2009, in the offices of Leitman, Siegal, Payne & Campbell, P.C. Present for Plaintiffs were Donald Stewart, Carolyn Smith Gidiere, and Dagney Johnson Walker; present for Defendants were Matt Lembke, William Brooks, Greg Hawley, Michael Sansbury, and Ted Hosp.

DISCOVERY

Prior to the meeting, Plaintiffs provided a list of topics on which they believe discovery is needed to address the jurisdictional issues raised in Defendants' Motion to Dismiss. A copy of that letter from Donald Stewart to Ted Hosp dated June 15, 2009, is attached hereto as Exhibit A.

A. Defendant's Position on Discovery:

Defendants' position is that, with the exception of the contracts between Defendants and the PACT Board,¹ none of the discovery topics listed by Plaintiffs are relevant to the jurisdictional issues before this Court. Based upon the allegations of the Complaint, it is clear

¹ Copies of those contracts were attached to the Defendants' motions to dismiss.

that the Plaintiffs have suffered no injury because PACT has not failed to make any tuition payments on behalf of the identified PACT participants. Indeed, PACT could not have failed to make tuition payments on behalf of the identified PACT participants because those participants are not expected to attend college for several years.

It is also incontrovertible that every PACT participant has received his or her full contractually-defined benefits to date, and the PACT Board has made clear that all payments will be made for the next academic year. In light of these undisputed facts, there is no need for any discovery to address the issues of Article III standing and ripeness.

Accordingly, the discovery requested by Plaintiffs is not relevant to the jurisdictional issues and appears to be nothing more than an improper fishing expedition. Such an expedition would be unduly burdensome on these Defendants at this time, since the jurisdictional issues have been fully presented to the Court and are due to be resolved in the Defendants' favor.

Furthermore, based on Plaintiffs' list of topics, it appears that a large amount of the discovery sought by Plaintiffs will be directed to third parties, heaping additional burdens on them. The imposition of such burdens should not be authorized by this Court in the absence of jurisdiction. Should the jurisdictional issues be resolved in Plaintiffs' favor, Plaintiffs will have sufficient opportunity to conduct merits discovery in accordance with the Federal Rules.

B. Plaintiffs' Position on Discovery:

Plaintiffs believe that discovery is needed both with regard to these Defendants and third parties, including the PACT Board in order to address the jurisdictional issues raised by the Defendants in their Motion to Dismiss. **[TO BE ADDED BY PLAINTIFFS]**

C. Timing Issues:

In the event the Court allows Plaintiffs to conduct discovery on the jurisdictional issues, the parties agree that ninety (90) days is a reasonable period in which to complete that discovery. Accordingly, should the Court grant Plaintiffs' request to conduct discovery, the parties agree that such discovery shall be completed within ninety (90) days of the Court's order.

SCHEDULING

The parties have agreed to establish separate briefing schedules for the Rule 12(b)(1) jurisdictional issues, and the Rule 12(b)(6) issues raised in Defendants' Motion to Dismiss, and propose the following schedule:

A. With regard to the Article III standing and ripeness issues raised by Defendants under Rule 12(b)(1):

In the event the Court does not permit Plaintiffs' discovery, Plaintiffs' submission in opposition to Defendants' Motion to Dismiss on 12(b)(1) grounds shall be filed no later than twenty-one (21) days after the Court's Order denying discovery. Defendants' reply submission shall be filed no later than eleven (11) days after the date on which the Plaintiffs' responsive submission was due.

In the event the Court allows Plaintiffs' discovery, Plaintiffs' responsive submission to the Defendants' Motion to Dismiss on 12(b)(1) grounds shall be filed no later than twenty-one (21) days after the deadline to complete discovery. Defendants' reply submission shall be due eleven (11) days after the date on which Plaintiffs' responsive submission was due.

B. With regard to the issues raised under Rule 12(b)(6):

In the event the Court grants the Motion to Dismiss filed by Defendants pursuant to Rule 12(b)(1), the case will be concluded and no further action will be necessary.

In the event the Court denies the Motion to Dismiss filed by Defendants pursuant to Rule 12(b)(1), the parties respectfully request a status conference with the Court, either in person or by telephone, in order to establish a process and schedule for addressing the 12(b)(6) motion.

Dated this 25th day of June, 2009.

Respectfully submitted,

/s Donald W. Stewart

Donald W. Stewart

One of the Attorneys for Plaintiffs

DONALD W. STEWART, P.C.

P. O. Box 2274

Anniston, AL 36202

/s Caroline Smith Gidiere

Caroline Smith Gidiere

Andrew P. Campbell

One of Attorneys for Plaintiffs

LEITMAN, SIEGAL, PAYNE & CAMPBELL, P. C.

2100A Southbridge Pkwy Ste 450

Birmingham, AL 35209-7706

/s Dagny Johnson Walker

JOHNSON AND WALKER, LLC

2100 3rd Avenue North, Suite 810

Birmingham, Alabama 35203

INTECH Investment Management LLC

/s Robert K. Spotswood

Robert K. Spotswood

Michael T. Sansbury

OF COUNSEL:

SPOTSWOOD SANSOM & SANSBURY, LLC

940 Concord Center

2100 Third Avenue North

Birmingham, Alabama 35203

Telephone: (205) 986-3621

Facsimile: (205) 986-3639

rks@spotswoodllc.com

msansbury@spotswoodllc.com

Luca Bronzi

HOGAN & HARTSON LLP

Mellon Financial Center

1111 Brickell Avenue, Suite 1900

Miami, Florida 33131

Telephone: (305) 459-6621

Facsimile: (305) 459-6550

lrbronzi@hhlaw.com

Rhumblin Advisers

/s/ Lee E. Bains, Jr.

A. Inge Selden, III

Lee E. Bains, Jr.

Edward A. ("Ted") Hosp

OF COUNSEL:

MAYNARD, COOPER & GALE, P.C.

1901 Sixth Avenue North

2400 Regions/Harbert Plaza

Birmingham, Alabama 35203-2618

Telephone: (205) 254-1000

Facsimile: (205) 254-1999

lbains@maynardcooper.com

iselden@maynardcooper.com

thosp@maynardcooper.com

Michael A. Collora

Ariatna Villegas-Vazquez

DWYER AND COLLORA

Federal Reserve Plaza

600 Atlantic Avenue

Boston, MA 02210

Telephone: (617) 371-1033

Facsimile: (617) 371-1037

mcollora@dwyerollora.com

avillegas-vazquez@dwyerollora.com

C.S. McKee, L.P.

/s/ Gregory H. Hawley

OF COUNSEL:

WHITE ARNOLD & DOWD P.C.
2025 3rd Avenue North, Suite 500
Birmingham, Alabama 35203
Telephone: (205) 323-1888
Facsimile: (205) 323-8907
ghawley@waadlaw.com

Michael A. Burger
GRENEN & BIRSIC, P.C.
One Gateway Center, Ninth Floor
420 Fort Duquesne Boulevard
Pittsburg, Pennsylvania 15222
Telephone: (412) 281-7650
Facsimile: (412) 281-7657
mburger@grenenbirsic.com

Earnest Partners, LLC

/s/ Lee E. Bains, Jr.

A. Inge Selden, III

Lee E. Bains, Jr.

Edward A. ("Ted") Hosp

OF COUNSEL:

MAYNARD, COOPER & GALE, P.C.

1901 Sixth Avenue North

2400 Regions/Harbert Plaza

Birmingham, Alabama 35203-2618

Telephone: (205) 254-1000

Facsimile: (205) 254-1999

lbains@maynardcooper.com

iselden@maynardcooper.com

thosp@maynardcooper.com

John Rock

DORSEY & WHITNEY LLP

50 South Sixth Street, Suite 1500

Minneapolis, MN 55402-1498

Telephone: (612) 492-6948

Facsimile: (612) 340-2868

rock.john@dorsey.com

Turner Investment Partners Incorporated

/s Jere F. White, Jr. _____

Jere F. White, Jr.

William H. Brooks

Brooke G. Malcom

OF COUNSEL:

LIGHTFOOT FRANKLIN WHITE LLC

The Clark Building

400 20th Street North

Birmingham, Alabama 35203-3200

Telephone: (205) 581-0700

Facsimile: (205) 581-0799

jwhite@lightfootlaw.com

wbrooks@lightfootlaw.com

bmalcom@lightfootlaw.com

Michael W. McTigue

Richard E. Coe

DRINKER BIDDLE

One Logan Square, Suite 2000

Philadelphia, PA 19103-6996

Telephone: (215) 988-2751

Facsimile: (215) 988-2757

Michael.McTigue@dbr.com

Richard.Coe@dbr.com

Acadian Asset Management LLC

/s Lee E. Bains, Jr.

A. Inge Selden, III

Lee E. Bains, Jr.

Edward A. ("Ted") Hosp

OF COUNSEL:

MAYNARD, COOPER & GALE, P.C.

1901 Sixth Avenue North

2400 Regions/Harbert Plaza

Birmingham, Alabama 35203-2618

Telephone: (205) 254-1000

Facsimile: (205) 254-1999

lbains@maynardcooper.com

iselden@maynardcooper.com

thosp@maynardcooper.com

Principal Global Investors, LLC

/s/ Luther M. ("Rusty") Dorr, Jr.

Luther M. ("Rusty") Dorr, Jr.

OF COUNSEL:

MAYNARD, COOPER & GALE, P.C.

1901 Sixth Avenue North
2400 Regions/Harbert Plaza
Birmingham, Alabama 35203-2618
Telephone: (205) 254-1030
Facsimile: (205) 254-1999
rdorr@maynardcooper.com

Perry A. Napolitano

REEDSMITH LLP

435 Sixth Avenue
Pittsburgh, PA 15219
Telephone: (412) 288-3131
Facsimile: (412) 288-3063
pnapolitano@reedsmith.com

Douglas K. Spaulding

REEDSMITH LLP

1301 K Street, N.W.
Suite 1300 East Tower
Washington, DC 20005
Telephone: (202) 414-9235
Facsimile: (202) 414-9299
dspaulding@reedsmith.com

Western Asset Management Company

/s/ Lee E. Bains, Jr.

A. Inge Selden, III

Lee E. Bains, Jr.

Edward A. ("Ted") Hosp

OF COUNSEL:

MAYNARD, COOPER & GALE, P.C.

1901 Sixth Avenue North

2400 Regions/Harbert Plaza

Birmingham, Alabama 35203-2618

Telephone: (205) 254-1000

Facsimile: (205) 254-1999

lbains@maynardcooper.com

iselden@maynardcooper.com

thosp@maynardcooper.com

Robert D. Eckinger

ADAMS AND REESE LLP

2100 Third Avenue North

Birmingham, Alabama 35203

Telephone: (205) 250-5011

Facsimile: (205) 250-5034

Robert.eckinger@arlaw.com

Marc T.G. Dworsky

MUNGER, TOLLES & OLSON LLP

355 South Grand Avenue

35th Floor

Los Angeles, CA 90071-1560

Telephone: (213) 683-9256

Facsimile: (213) 683-5156

marc.dworsky@mto.com